

ON THE DOCKET

Volume 4, Issue 2

April, May, June, 2002

U.S. BANKRUPTCY COURT, DISTRICT OF RHODE ISLAND

The Inner Workings: News and Advice

By: Susan M. Thurston, Clerk of Court

Welcome Spring! The U.S. Bankruptcy Court has been busy the last several months completing its conversion to a new national email system -- Lotus Notes, as well as finishing up the automation enhancements in the courtroom. We have completed the installation of the large plasma monitors for displaying evidence to the audience in attendance. In the next couple months, we will add light pens and a video printer to complete the courtroom technology system. Training on the use of the system has been ongoing, and if you have not yet had an opportunity to learn the system, please make arrangements with either the courtroom deputy or electronic court recorder operator to do so. You will now notice that the courtroom is undergoing a remodeling, with the removal of the jury box and the relocation of 12 courtroom seats to the right side of the courtroom. In addition, once that work is completed, new carpeting and drapery will be installed. The Judge's

conference room is also being enlarged, including a new conference room table for expanded seating. We hope these cosmetic improvements (have you noticed all the new signage around the courtroom and clerk's office?) will make your business with the court more comfortable and productive.



Elsewhere in this newsletter, you will read about the court's 12 month im-

(Continued on page 2)

Inside this issue:

Inner Workings News & Advice	1,2	BNC Benefits	7
CM/ECF Conversion	2,3	Intake Input	7
Team Coach	3	Customer Service Survey	8
Recent Court Decisions	4,5		
Federal Employee of the Year	6		

Kristen Batty, Editor

(News & Advice cont. from page 1)



The Biggest Operational change
this court has ever carried out...

plementation of a new case management/electronic filing system. *see, below CM/ECF Conversion.* We are currently in the pre-implementation phase of the conversion, where we are documenting our existing work flows and paper stops, and preparing draft local rules and administrative procedures. This conversion will likely be the biggest operational change

the court has ever carried out and it will also be a tremendous change in the way that the users of the court do business - the attorneys, trustees, U.S. Trustee, and parties. We have enlisted the support of the Attorney Advisory Committee to provide initial feedback and recommendations on

proposed process changes, and will be keeping you informed as we move ahead. Twelve members of the court, including the Bankruptcy Judge and Law Clerk, recently traveled to the Bankruptcy Court in New Hampshire to learn about how the system is working in that district. New Hampshire went "live" on the electronic filing component in April and had a lot of good advice for us concerning training and support issues. In fact, based on the feedback New Hampshire gave us, we have begun preparing a classroom to be used strictly for CM/ECF training for the Bar and support staff.

Our website continues to be a place for valuable information about the court and its activities. Visit us often at www.rib.uscourts.gov !

CM/ECF Conversion

By: Joseph Wilkicki, Chair CM/ECF Public Relations Subcommittee

The first steps have been taken here at the Bankruptcy Court to begin replacing the current case management system with a new case management and electronic case files system. This new system, known as **CM/ECF**, was developed by the Federal Judiciary and will allow attorneys to file documents directly with the court 24 hours a day, 7 days a week, 365 days a year.

24 HOUR
ACCESS TO THE
CLERK'S
OFFICE

The installation of the computer servers has been completed and the **CM/ECF** software should be installed, tested and ready to use by the early Fall. The training of court staff will begin this summer and continue through December. We are currently looking at a "Go Live" date in early February of 2003.

After court staff has had a few months of familiarity with the new system, the court will begin to allow attorneys practicing in the District of Rhode Island to file documents electronically from their office. For attorneys and their staff

(Continued on page 3)

(CM/ECF cont. from page 2)

that are trained on the use of the new system, the court will never be closed!

As the court moves closer to the actual implementation of CM/ECF, more detailed information will be made available to members of the bar. In the meantime, here is a list of hardware/software requirements.

- Pentium PC running Windows 95/98 or Macintosh.
- Internet Service.
- Word processing and/or petition software.
- Netscape Navigator software version 4.6 or 4.7.

- Adobe Acrobat software (Reader and Writer), to convert documents from word processing software to Portable Document Format (PDF), or to save scanned documents to PDF

NOTE: *This is something you will have to purchase - downloading from the Internet only gives you Acrobat Reader and will not allow you to convert documents. Special Law Office Pricing from Adobe - Call 888-502-5275. Attorneys will need to give bar #. Mention Electronic Case Filing with the U.S. Courts.*

- A scanner for documents not in any software.

Team Coach By: Cindy Cory, Courtroom Deputy

In an attempt to obtain compliance with Local Rule 1005-1(a) entitled, *Caption of Papers* (which requires that "[t]he bankruptcy case name, number, and chapter shall appear on all papers filed with the Clerk, and *must also appear on the signature page of all documents filed with the court*"), case managers are now issuing **Notices of Defective Pleading** for any document filed which does not include the case name and number on the signature page. This requirement ensures that once imaged, the document can be easily identified to the case. In order to avoid receiving a Defective Pleading Notice, please check all signature pages for these captions before filing court documents. Form reaffirmation agreements and/or other form documents should be amended to include the caption information on the signature page.

To ensure that all creditors receive due notice of the bankruptcy filing, case managers compare the creditor disk matrix to the creditors listed on the schedules. Very often discrepancies are found which trig-

gers a Notice of Defective Pleading to Amend the Matrix, with a \$20 fee. It is highly recommended that practitioners print out a copy of the matrix before filing and compare it to the creditors listed on the schedules to ensure accuracy. This will save the filer both time and money. Also, a separate disk containing the creditor matrix is required in every bankruptcy case. Do not attempt to combine more than one matrix or form on a disk, or the disk will be rejected.

Reaffirmation Agreements must be filed using R.I. Local Bankruptcy Form U. This form is available in the Local Rules book or from the Court's website at www.rib.uscourts.gov. Reaffirmation Agreements that do not use this form are deemed defective.



Defective pleadings being issued for Caption of Papers and reaffirmations not filed on form U.

Recent Court Decisions

By: Jonathan Calianos, Esq., Career Law Clerk

Here is a short digest of some noteworthy opinions from the Court. As always, the full text of Court opinions are available at our web site www.rib.uscourts.gov.

What Remedy is Available to a Creditor when the Debtor Fails to Comply with 11 U.S.C.

§ 521(2)(B)?

The Case: *In re Rathbun*, 275 B.R. 434 (Bankr. D.R.I. 2001).

Short Answer: The Creditor is entitled to relief from stay.

The debtors owed the bank approximately \$23,000 on a promissory note that was secured by a mortgage on their home. Pursuant to their statement of intent, the debtors indicated that they would reaffirm the debt. Apparently the debtors had a change of heart and decided they did not have to reaffirm the debt in question, but still wanted to retain their home. The bank filed a motion asking the Court to compel the debtors to reaffirm their obligation with the bank or, in the alternative, to order the debtors to surrender the collateral. The debtors initially argued that the home mortgage debt was not a consumer debt and therefore Section 521(2) was inapplicable. The Court ruled that a home mortgage is a consumer debt because it is a debt incurred for a personal, family or household purpose and it was not incurred with an eye toward profit. The Court also held that the appropriate remedy for a creditor when a debtor fails to perform his or her stated intention under Section 521(2)(B) is to grant the creditor relief from stay.

Can a Case Pending in State Court in Massachusetts be Removed Directly to the Bankruptcy Court in Rhode Island?

The Case: *In re Newport Creamery, Inc.*, 275 B.R. 179 (Bankr. D.R.I. 2002).

Short Answer: No.

The defendants in a civil law suit pending in Worcester County Superior Court, in Massachusetts filed an application for removal of the action directly with the Rhode Island Bankruptcy Court. While the Court questioned the efficacy of the removal, it accepted the filing *de bene* on the defendant's representation that there was ample authority to support the direct filing with Rhode Island. Upon review, the Court found under the clear language of 28 U.S.C. §1452(a) and Fed. R. Bankr. P. 9027(a)(1), that the removal must be filed with the "district court for the district where [the] civil action is pending." *Id.* at 181 quoting 28 U.S.C. §1452. The Court struck the Application for Removal and directed the Clerk to return the original papers to the defendants.

If a Debtor is Employed in Rhode Island but Lives in Massachusetts, Can the Debtor's Place of Employment be Considered the Debtor's Principal Place of Business for Venue Purposes?

The Case: *In re Shaughnessy*, 2002 WL 1001007 (Bankr. D.R.I. February 20, 2002)

Short Answer: No.

The matter was initiated on the Court's *sua sponte* order to show cause why the petition should not be dismissed for being filed in the

(Continued on page 5)

(Recent Court Decisions Cont. from page 4)

wrong venue. The debtor indicated in his petition that he had not been domiciled, had a residence, or principal assets located in the District of Rhode Island in the 180 day preceding the filing. However, he stated that his principal place of business is located in this District as a result of his place of employment. The Court held that "the term 'principal place of business' applies only to businesses and business owners, and that place of employment does not equate to a debtor's principal place of business." Therefore, venue in Rhode Island is not proper in such case.

Is the Time for Filing Section 523 Dischargeability Complaints Under Fed. R. Bankr. P. 4007(c) a Statute of Limitations that is Waivable or is the Rule Jurisdictional?

The Case: *Demirgioglu v. Rinde* (In re Rinde), 276 B.R. 330 (Bankr. D.R.I. 2002).

Short Answer: Rule 4007(c) is jurisdictional and cannot be waived.

The plaintiff creditors filed a complaint against the debtors to determine the debt was nondischargeable under 523(a)(2)(A). It is undisputed that the complaint was filed forty-two days after the bar date to file such complaints as set forth in Fed. R. Bankr. P. 4007(c). The debtors answered the complaint and did not plead the late filing of the complaint as an affirmative defense. Five months later, the debtors filed a motion to dismiss arguing the complaint was not timely filed. The plaintiffs opposed the motion

arguing that the defense was waived by failing to plead it affirmatively and by allowing five months to pass. The Court held that the bar date in Rule 4007(c) is jurisdictional and dismissed the case.

Can a Chapter 13 Plan Provide That a Mortgagee Can Only Seek Post-Confirmation Fees, Costs and Expenses by Filing an Application for Approval with the Bankruptcy Court?

The Case: *In re Araujo*, __ B.R. __, 2002 WL 970485 (Bankr. D.R.I. May 7, 2002).

Short Answer: No.

The debtor sought confirmation of her Chapter 13 Plan which provided *inter alia* that any mortgagee requesting reimbursement of post petition attorney fees or costs or other expenses incurred during or related to the chapter 13 bankruptcy process "shall file an application for approval with the Bankruptcy Court... ." The debtor argued that such a provision would prevent unscrupulous mortgagees from exercising unfettered discretion in charging fees and expenses to Chapter 13 debtors. The mortgagee objected arguing that post-petition fees and expenses are governed by the note and mortgage, and should not be subject to post-confirmation review by the bankruptcy court. The Court agreed with *Telfair v. First Union Mortgage Co.*, 216 F.3d 1333 (11th Cir. 2000) and held that Section 506(b) does not apply post-confirmation to allow the court to review such fees and expenses, and that such issues are covered by the note and mortgage, under which both parties agreed to be bound.

In observance of Independence Day, the Clerk's Office will be CLOSED on Thursday, July 4, 2002.



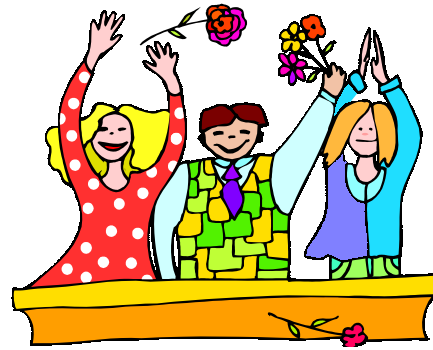
Federal Employee of the Year Program

By: Gail Kelleher, Chief Deputy Clerk

Congratulations Ann & Cindy!

Cindy Cory and **Ann McGloshen** were honored recently at the 30th Annual Federal Employee of the Year Awards Ceremony held at Roger Williams Park Casino. Cindy Cory began her career with the courts in 1980 as courtroom deputy to Judge Arthur Votolato. Over the last two decades, she has affirmed herself as an effective, efficient, and extremely versatile employee. Ann McGloshen has been employed with the US Bankruptcy Court since 1990. Since joining our court family, she has proven herself to be a tireless employee and a role model for those who believe that duty to our fellow citizens transcends the workplace.

Cindy Cory was a finalist in the Administrative Employee of the Year category for her work with the Staffing Requirement and Analysis Office (SRAO). This national project has several important goals, including providing support to the Judicial Conference Committee in the area of court staffing requirements; monitoring changes in the courts' dockets and identifying major factors affecting costs and staff resources; and reviewing work methods and work flow to identify opportunities for streamlining processes and for improving efficiency. Cindy's duties included traveling to courts throughout the country to interview staff in order to capture the work performed, analyze interviewees' statements and perform comparisons of time expended to produce accurate data results.



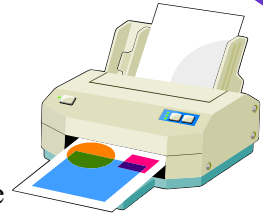
Ann McGloshen was nominated and ultimately awarded the John H. Chafee Humanitarian Award for her work. She is the Director of Women's Ministries for the Olney Street Baptist Church, and oversees several outreach programs which include the SERVE-NE food program and a full scale health program which is free to the community. On a national level, Ann spent four years as the state representative to the General Board of American Baptist Churches, USA. This position required travel throughout the country twice a year. In this role, Ann helped formulate policy, and served on the Board of Educational Ministries. For the last two years, she was the Vice President of Educational Ministries which automatically placed her on the Executive Board of the American Baptist Church USA, for which she attended Executive Board meetings around the United States.

Congratulations Ann and Cindy!

You are role models for all of us, and splendid examples of what can be accomplished in our professional and private lives.

Bankruptcy Noticing Center Benefits

By: Kristen E. Batty, HR Administrator



The Bankruptcy Clerk's Office has recently become aware that some practitioners are receiving court notices and orders often the day before or the actual day of the deadline to comply with the pleading being received. To avoid this problem, consider the below suggestions.

Mailings for all Bankruptcy Courts in the U.S. are handled by the Bankruptcy Noticing Center (BNC) in Virginia under a national contract. Once the BNC receives a noticing request from the Clerk's Office, under the contract it has 2 days from receipt to mail it or otherwise process the request. Documents are then mailed from Virginia through the U.S. Postal Service. Because of the many issues affecting the Postal Service this year, we are seeing an increasing delay in mail delivery.

WHAT TO DO ??? Two years ago, the United States Bankruptcy Court for the District of Rhode Island began participating in a national program to expand the methods by which service could be made to court customers. Practitioners may now **choose to receive bankruptcy notices and orders by Internet E:mail or by FAX to your office.** Electronic noticing provides service of court docu-

ments days faster than the U.S. Mail. This program has been highly successful and participation in it is strongly recommended by the court to alleviate the postal delay problem. As most practitioners know, the response deadlines in Bankruptcy Court are short (typically 10 days) and use of these alternative service methods will greatly improve the amount of time counsel and parties have for complying with court notices and orders.

To sign up for either the Fax or E:Mail delivery options, visit the Electronic Bankruptcy Noticing web page at www.EBNuscourts.com or use the link included on our website. Detailed information is available about this free electronic noticing service including a list of known return receipt e-mail providers, the Electronic Noticing Implementation Guide and Electronic Bankruptcy Noticing Questions and Answers. An Electronic Bankruptcy Noticing Agreement must be signed and returned to the BNC to initiate this service. This form is available on the web site and should be submitted directly to the BNC.

Intake Input By: Jody Venuti, Intake Clerk

Last December one of the amendments to the Federal Rules was to add an "Exhibit C" to the second page of the voluntary petition. For those of you who haven't yet obtained a copy of the "new page 2", please pick one up in our public area or download it from our website. (www.rib.uscourts.gov) This will ensure that you won't receive a Notice of Incomplete filing (for this form, anyway) upon filing a new petition.

Once again, our website is full of information (even without a pacer password)!! You can get all of the new forms and most are writeable. Applying for a password on the home page will allow you to query cases and images in our district as well as accessing the US Party Case Index which will allow you to query

cases in Appellate, Civil, Criminal and, of course, Bankruptcy Courts across the country. You will be billed by Pacer at a rate of .07 cents per page viewed. This fee is charged only when a user's total annual bill exceeds \$10.00. Otherwise, no bill is issued.

As always, we care about what you think. Please take a moment and fill out our Customer Service Survey either online, at the Clerk's office, or use the one on the back page of this newsletter and mail or fax it to us. We're always open to suggestions!



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND**

2002 Employee Recognition Customer Service Survey

Customer service and your satisfaction is a primary goal of the Clerk's Office. As we approach the occasion of our Annual Employee Recognition and Awards Ceremony, we are asking you, our valued customers, to assist in the selection process by nominating the employee whose efforts provide exemplary customer service. Please take a few moments to select the employee you believe should be honored, with a Customer Service Award. Choose one in each category by circling the name of your choice. After making your selection, please include a brief statement explaining your reasons for your nomination. Your participation in this survey is greatly appreciated.

Categories

1. Intake Customer Service Award Nominees:

Anne	Statement in support of nomination: _____
Jody	_____
Patrice	

2. Case Manager Customer Service Award Nominees:

Amy	Florence	Linda	Christine	Statement in support of nomination: _____
Carolyn	Dana	Holly		_____
Cindy	Debby	Jennifer		_____

3. Automation Customer Service Award Nominees:

Craig	Matt	Michelle T.	Statement in support of nomination: _____
Systems Manager	Automation Support	Automation Applications	_____
	Specialist	Specialist (website)	

4. Administration/Chambers Support Customer Service Award Nominees:

Joe=Admin. Officer	April=Financial	Michelle M.=Operation Super.	Statement in support of nomination: _____
Leah=Judicial Assist.	Jonathan=Law Clerk	Ann M.=Admin. Assistant	_____
Kristen=HR Administrator			_____

(Please use a separate sheet for additional comments.)

TO PRESERVE THE INTEGRITY OF THE SURVEY, PLEASE REMAIN ANONYMOUS.

PLEASE RETURN THE COMPLETED SURVEY TO THE CLERK'S OFFICE BY:

JULY 5, 2002

U.S. Bankruptcy Court
380 Westminster Street, 6th Fl.
Providence, RI 02903
ATTENTION: GAIL
Or Fax to: Gail at (401) 528-4470